

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FATEN BUSH/FATEN BUSH HOME CHILD CARE, SP 2014-SP-179 Appl. under Sect(s). 3-303, 8-305, 8-914, and 8-923 of the Zoning Ordinance to permit a home child care facility; to permit a reduction in minimum yard requirements based on errors in building location to permit a deck to remain 4.6 ft. from the rear lot line, 0.0 ft. from a side lot line, and 11.7 ft. from a front lot line; and to permit an accessory structure (trellis) to remain 1.1 ft. from a side lot line; and to permit a fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 5958 Hall St., Springfield, 22152, on approx. 10,857 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 79-3 ((16)) 82. Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2016; and

WHEREAS, the Board has made the following findings of fact:

1. The owners of the property are Faten Bush and Ahmed Bush.
2. The lot size is 10,857 square feet.
3. The present zoning is R-3 (cluster).
4. Staff is recommending approval for the home child care and also for the increase in the fence height in the front yard with the proper development conditions, and the Board adopts the staff rationale.
5. There were not a lot of specific issues related to the home child care itself, but as the application was reviewed, there were some special permit issues related to the property.
6. As indicated by the applicants today, the errors in building location were undertaken prior to their purchase of the home. These errors were not through the fault of the property owner and were undertaken in good faith. At the time of purchase, they obtained the revocable license agreement with the homeowners association for the area of encroachment for the errors in building location for the facilities. The applicant has indicated they are working with the homeowners association to update that agreement.
7. With respect to the fence, that location is not affecting sight lines. There are similar fences in the neighborhood.
8. The applicant has read, understands, and agrees with the proposed development conditions.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. The error exceeds ten (10) percent of the measurement involved, or
- B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
- C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- F. It will not create an unsafe condition with respect to both other property and public streets, and
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
- H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This approval is granted to the applicant, Faten Bush, only, and is not transferable without further action of the Board, and is for the location indicated on the application, 5958 Hall Street, and is not transferable to other land.
2. This special permit is granted only for the home child care use, the location of the accessory structures (deck and trellis), and the location of a fence in the front yard as indicated on the plat titled, "Southern Grove, Section 1, Lot 82," by Andrew N. Hornbeck, Land Surveyor, of Merestone Geomatics, LLC, dated December 18, 2015, as revised through January 8, 2016, as submitted with this application, provided further that this approval expressly excludes any portion of the fence or other structures that may be located on Tax Map # 79-3 ((16)) A.
3. A copy of this Special Permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. Excluding the applicant's own children, the maximum number of children on site at any one time shall be 12.
7. A maximum of two full-time non-resident employees, whether paid or not for their services, may be involved in the home child care facility, limited to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.
8. There shall be no signage associated with the home child care facility.
9. All drop-off and pick-up activities shall occur in the driveway located on the subject property.
10. Any portions of the dwelling associated with the home child care facility that are used as a children's sleeping or rest area shall be located in a room with an operable exterior window, door or similar device that provides for a means of escape and access for rescue in the event of an emergency. Such emergency escape and rescue openings shall be of the dimension and size specified by the Virginia Uniform Statewide Building Code.

11. The approval of the use is contingent upon maintenance of a state-issued family day home license that permits the number and ages of children being cared for at the home child care facility.

12. The child care facility shall be operated in accordance with Chapter 30 of the County Code, entitled "Minimum Private School and Child Care Facility Standards".
13. The Applicant recognizes and acknowledges that the trellis, walkway, and retaining wall in the northern side yard of the subject property that is the subject of this special permit application encroaches into a 10-foot wide storm sewer easement. Accordingly, the Applicant and her successors and assigns shall indemnify, keep and save harmless the County, its agents, officials, employees, volunteers, and the Board of Zoning Appeals against claims of injuries, death, damage to property, or other suits, liabilities, judgments, cost and expenses which may otherwise accrue against the county in consequence of the granting of this special permit. The Applicant shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the county and/or the Board of Zoning Appeals in any such action, the Applicant and her successors and assigns shall, at his or her own expense, satisfy and discharge the same.
14. For the decks to the rear of the house, the applicant shall obtain all necessary permits within 30 days and complete and pass all necessary inspections within three (3) months of approval of the special permit. Until such time as the necessary permits and inspections are obtained, no home child care activities shall take place on the decks.
15. The fences shall be locked during operation of the home child care, along with the doors from inside the kitchen to the pool area. The area around the pool shall not be used as a play area.

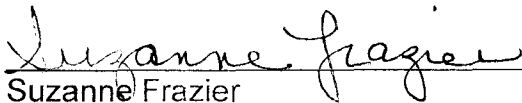
Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall take effect upon adoption of a resolution of approval by the Board of Zoning Appeals. This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

A Copy Teste:

A handwritten signature in cursive script, reading "Suzanne Frazier", written over a horizontal line.

Suzanne Frazier

Deputy Clerk to the Board of Zoning Appeals